

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

CHAPTER 179

# **HOUSE BILL 2069**

AN ACT

AMENDING SECTION 9-506, ARIZONA REVISED STATUTES; RELATING TO CABLE  
TELEVISION SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-506, Arizona Revised Statutes, is amended to  
3 read:

4 9-506. Authority to issue license; limitations

5 A. For the purpose of authorizing and regulating the construction,  
6 operation and maintenance of cable television systems, the licensing  
7 authority of a city, including a charter city, or town for an incorporated  
8 area, or the licensing authority of the county for unincorporated areas,  
9 either individually or jointly by intergovernmental contract, may issue a  
10 license to any person to use public streets, roads and alleys and shall  
11 impose conditions, restrictions and limitations upon the use of public  
12 streets, roads and alleys and upon the construction, operation and  
13 maintenance of cable television systems.

14 B. Subject to the limitations of this section, a licensing authority  
15 may adopt resolutions or ordinances implementing and controlling the license  
16 or joint license, issue a license containing other terms and conditions and  
17 impose a license fee on gross revenues. In addition to the limitations of  
18 this section, the license is subject to the limits established by the  
19 communications act of 1934, as amended (47 United States Code sections 151  
20 through 615b) and the federal communications commission.

21 C. Other than the license fee on gross revenues authorized by this  
22 article and transaction privilege taxes as provided in this subsection, a  
23 licensing authority may not levy a tax, rent, fee or charge, however  
24 denominated, on a cable operator for the use of the public streets, roads or  
25 alleys to provide cable service or levy a tax, fee or charge on the privilege  
26 of engaging in the business of providing cable service in the area of  
27 jurisdiction. Taxes, rents, fees and charges include all access channel  
28 support except FOR IN-KIND SERVICES OR PAYMENTS as provided in subsection D  
29 of this section, rental, application, construction, permit, inspection,  
30 inconvenience and other fees and charges related to a cable operator's use of  
31 the public streets, roads and alleys. In addition, the following apply:

32 1. Any transaction privilege taxes otherwise authorized by law to be  
33 levied on the business of providing cable service or in relation to use of  
34 the public streets, roads or alleys to provide cable service may be levied on  
35 a cable operator if the taxes are levied only on gross revenues and the rate  
36 of the taxes is subject to paragraph 3 of this subsection. This subsection  
37 does not authorize the imposition of transaction privilege taxes on  
38 interstate telecommunications services.

39 2. The license fee and any transaction privilege taxes levied on gross  
40 revenues constitute a franchise fee within the meaning of 47 United States  
41 Code section 542(g)(1).

42 3. Under no circumstances may the total of the rates of the license  
43 fee and of any transaction privilege taxes on gross revenues levied or  
44 assessed by a licensing authority for the privilege of providing cable  
45 service and related use of the public streets, roads or alleys to provide

1 cable service exceed a rate of five per cent, except during the transition  
2 period for certain licenses as provided in subsection H of this section.

3 4. A cable operator shall pass on to subscribers any reduction in the  
4 amount of fees, taxes or other charges paid by a cable operator and itemized  
5 to subscribers that results from the implementation of ~~this~~ THE amendment to  
6 this section EFFECTIVE ON SEPTEMBER 21, 2006.

7 D. A licensing authority may not require a cable operator to provide  
8 in-kind services, make in-kind payments or pay a fee in addition to the  
9 monetary license fee levied or assessed as provided in this section as part  
10 of or as a condition of issuing a license to provide cable service, except  
11 that:

12 1. A licensing authority may require a cable operator to provide  
13 channel capacity to transmit programming over which the cable operator  
14 exercises no editorial control except as authorized by 47 United States Code  
15 section 531(e). The channel capacity shall be limited to not more than two  
16 channels of public, educational or governmental access programming in the  
17 basic service tier of the cable television system and not more than two  
18 channels of noncommercial governmental programming, at least one of which may  
19 be programmed by the federal government, in the digital programming tier of  
20 the cable television system. If channel capacity is required, the  
21 programming shall be specified in the license and the cable operator may  
22 require that the channels regularly display an unobtrusive logo or other  
23 suitable identifier of the cable operator as set forth in the license.

24 2. A LICENSING AUTHORITY MAY REQUIRE A CABLE OPERATOR TO INCUR COSTS  
25 AND EXPENSES TO PROVIDE, MAINTAIN AND OPERATE FACILITIES AND EQUIPMENT OF THE  
26 CABLE TELEVISION SYSTEM, INCLUDING FACILITIES AND EQUIPMENT FOR SIGNAL  
27 CARRIAGE, PROCESSING, REFORMATTING AND INTERCONNECTION:

28 (a) TO CONNECT THE CABLE TELEVISION SYSTEM, AS IT MAY BE RELOCATED  
29 FROM TIME TO TIME, TO TRANSMIT PROGRAMMING TO AND FROM EXISTING LOCATIONS OF  
30 PUBLIC, EDUCATIONAL OR GOVERNMENTAL ACCESS FACILITIES AND TO ALLOW MONITORING  
31 OF ACCESS PROGRAMMING AT THE FACILITIES.

32 (b) TO TRANSMIT PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS  
33 TO SUBSCRIBERS WITH THE SAME PREVAILING QUALITY, FUNCTIONALITY AND  
34 IDENTIFICATION AS OTHER CHANNELS.

35 ~~2-~~ 3. A licensing authority may require a cable operator to provide  
36 the basic service tier of cable service at no monthly service charge to  
37 offices and facilities of the licensing authority.

38 ~~3-~~ 4. The value of any channel capacity provided pursuant to  
39 paragraph 1 of this subsection, ~~including any capital costs and charges for~~  
40 ~~or in support of its use,~~ THE COSTS AND EXPENSES INCURRED PURSUANT TO  
41 PARAGRAPH 2 OF THIS SUBSECTION and THE VALUE of basic service provided  
42 pursuant to paragraph ~~2-~~ 3 of this subsection may not be offset against the  
43 license fee levied or assessed under this section.

44 E. This section does not prohibit a cable operator from agreeing to  
45 provide in-kind services or make in-kind payments in the area of jurisdiction

1 that are prohibited by subsection D of this section if the agreement with the  
2 licensing authority is not part of, or entered into as a condition of being  
3 issued, a new, renewed or amended license to provide cable service. An  
4 agreement that requires in-kind cable service or payments shall set forth the  
5 total annual fair market value of the in-kind cable service and payments,  
6 which shall be less than or equal to and offset against the license fee  
7 levied or assessed annually pursuant to this section. The license shall  
8 authorize the cable operator to retain license fees and taxes collected from  
9 its subscribers in the amount of this offset. In-kind cable services and  
10 payments include any channel capacity and all capital costs and charges for  
11 or in support of the use of any channel capacity that the cable operator  
12 agrees to provide under this subsection.

13 F. Notwithstanding subsection C of this section, a licensing authority  
14 may require that a cable operator:

15 1. Bear reasonable costs that are associated with damage caused to  
16 public streets, roads and alleys by construction, maintenance and operation  
17 of its facilities in the public streets, roads and alleys and that are  
18 imposed on a competitively neutral and nondiscriminatory basis in relation to  
19 costs borne by telecommunications corporations under section 9-582,  
20 subsection C.

21 2. Pay fines, fees, charges or damages for breach of the terms and  
22 conditions of the license.

23 G. This section does not affect the authority of a licensing authority  
24 to manage the public streets, roads and alleys within its boundaries or to  
25 exercise its police powers.

26 H. A license that is in effect on ~~the effective date of this amendment~~  
27 ~~to this section~~ SEPTEMBER 21, 2006, including one that is later renewed or  
28 extended for a term that begins before July 1, 2007, is enforceable in  
29 accordance with its terms and conditions as of July 1, 2007 and is not  
30 subject to the provisions of ~~this~~ THE amendment to this section EFFECTIVE ON  
31 SEPTEMBER 21, 2006. If a license that is in effect on ~~the effective date of~~  
32 ~~this amendment to this section~~ SEPTEMBER 21, 2006 is later extended or  
33 renewed for a term that begins after June 30, 2007, the extended or renewed  
34 license is subject to the provisions of ~~this~~ THE amendment to this section  
35 EFFECTIVE ON SEPTEMBER 21, 2006 AND OF THE AMENDMENT TO THIS SECTION,  
36 effective on the first day of the renewal or extension term, unless the term  
37 begins before January 1, 2008, in which case the limitation in subsection C,  
38 paragraph 3 of this section on the rates of the license fee and of any  
39 transaction privilege taxes on gross revenues is:

40 1. Five per cent, if the gross effective rate is five per cent or  
41 less.

42 2. If the gross effective rate is more than five per cent, five per  
43 cent plus the following percentage:

44 (a) In the first year of the extension or renewal term, the gross  
45 effective rate minus five per cent, multiplied by two-thirds.

1 (b) In the second year of the term, the gross effective rate minus  
2 five per cent, multiplied by one-third.

3 (c) In the third year of the term, and thereafter, zero per cent.

4 I. For purposes of subsection H of this section, "gross effective  
5 rate" means one hundred per cent multiplied by the fraction in which the  
6 numerator is the sum of all taxes, fees and charges of the licensing  
7 authority that the cable operator itemized to subscribers and paid to the  
8 licensing authority under the license for the twelve calendar months  
9 immediately preceding ~~the effective date of this amendment to this section~~  
10 SEPTEMBER 21, 2006 and the denominator is the cable operator's gross revenues  
11 for that period in the area of jurisdiction.

12 Sec. 2. Legislative findings

13 The legislature finds and determines that this act is necessary as a  
14 matter of statewide concern to clarify the application of the requirements of  
15 Laws 2006, chapter 3, which ensures that cable customers are not subject to  
16 excessive local cable related fees, charges and taxes and the imposition of  
17 excessive in-kind service requirements as a condition of a city, town or  
18 county issuing a cable license to a cable operator. The public policy of  
19 this state is that this act be enforced to the fullest extent permitted by  
20 federal law.

APPROVED BY THE GOVERNOR MAY 4, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2007.